

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE:

RAFAEL MONTES DE OCA  
DEBTOR

CASE NO. 15-10587TMD  
CHAPTER 13

**MOTION FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE  
APPEAL PENDING IN THE THIRD COURT OF APPEALS**

TO THE HONORABLE TONY DAVIS:

**This pleading requests relief that may be adverse to your interest.**

**If not timely response is filed within fourteen (14) days from the date of service, the  
relief requested in the motion will be granted without a hearing being held.**

**A timely filed response is necessary for a hearing to be held.**

1. This MOTION FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE APPEAL PENDING IN THE THIRD COURT OF APPEALS is filed on behalf of RAFAEL MONTES DE OCA ("Movant"), for cause. This motion is further filed pursuant to Bankruptcy Rule 9014 and constitutes a contested matter thereunder.

2. This court has jurisdiction over this proceeding pursuant to 28 U.S.C. Section 1334 and 28 U.S.C. Section 157(b)(2)(G).

3. The Movant, RAFAEL MONTES DE OCA is the Debtor in this Chapter 13 proceeding which was filed May 4, 2015. Prior to the filing Movant had been involved in a lawsuit with Eduardo Gutierrez, a creditor in this case. Mr. Gutierrez received a Judgment in his favor in the County Court at Law No. 2 of Travis County, Texas, Cause No. C-1-CV-12-000782 July 24, 2014. A Notice of Appeal was timely filed by Movant October 20, 2014 in Cause No. 03-14-00668-CV in the Third Court of Appeals. The Reporter's Record was filed November 12, 2014. The Clerk's Record was filed November 25, 2014 and the Appellant's brief was filed February 25, 2015. This Case was filed to Stay and action for foreclosure by Mr. Gutierrez and the appeal was then stayed by the Court of Appeals May 19, 2015.

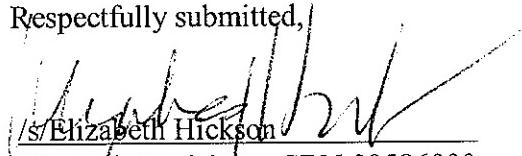
4. Movant is prepared to go forward with this appeal which if successful will result in a

reduction of Mr. Gutierrez' claim. The prosecution of this appeal will not affect Movant's ability to maintain his plan payments nor will it adversely affect any of his property. His attorney was paid in advance prior to the filing for his services to prosecute this appeal

5. Movant is prevented from pursuing this Appeal as a result of the automatic stay provisions of 11 U.S.C. Section 362(a)(1). Cause exists under 11 U.S.C. Section 362(d)(1) for modifying such stay so as to permit Movant to proceed with the appeal.

WHEREFORE, PREMISES CONSIDERED, Movant prays for an order modifying the automatic stay to permit him to pursue the appeal pending in the Third Court of Appeals of Texas Cause No. 03-14-00668-CV titled Rafael Montes De Oca, Appellant v. Eduardo Gutierrez, Appellee and to litigate any appeals therefrom. Movant further prays for such other and further relief to which he may be justly entitled.

Respectfully submitted,

  
/s/ Elizabeth Hickson  
Elizabeth J. Hickson, SBN 09586000  
4833 Spicewood Springs Road  
Suite 200  
Austin, Texas 78759  
(512)346-8597  
(512)346-2047 fax  
Attorney for Debtor

**CERTIFICATE OF SERVICE**

The above signed hereby certifies that on January 12, 2016, a true and correct copy of the foregoing document was served upon the following parties-in-interest:

By Electronic Notice:

Deborah B. Langehennig,  
Chapter 13 Trustee

Lance Justin Erickson

Lee Gordon

B. Weldon Ponder, Jr.

Douglas J. Powell

Mitchell D. Savrick

Michael W. Zientz

and to all creditors on the attached creditor matrix.

Label Matrix for local noticing  
 0542-1  
 Case 15-10587-tmd  
 Western District of Texas  
 Austin  
 Tue Jan 12 16:01:00 CST 2016

Cavalry Spv 1, LLC  
 c/o Bass & Associates, P.C.  
 3936 E. Ft. Lowell Rd, Suite #200  
 Tucson, AZ 85712-1083

Citi Mortgage, Inc.  
 PO Box 689196  
 Des Moines, IA 50368-9196

County of Williamson  
 c/o Lee Gordon  
 P.O. Box 1269  
 Round Rock, TX 78680-1269

Fernando Montes and Edgar Solano  
 15200 FM 1825  
 Pflugerville, TX 78660-3130

Internal Revenue Service  
 P.O. Box 7346  
 Philadelphia, PA 19101-7346

(p)LILLIAN WILSON LLC  
 3432 GREYSTONE DR  
 STE 100  
 AUSTIN TX 78731-2357

Ocwen Loan Servicing LLC  
 c/o Michael Zientz  
 14160 North Dallas Parkway, Ste. 900  
 Dallas, TX 75254-4314

Reagan Advertising  
 7301 Burleson  
 Austin, TX 78744-3207

Tarpon Hunters, LLC  
 c/o Douglas J. Powell  
 820 W. 10th  
 Austin, TX 78701-2065

U.S. BANKRUPTCY COURT  
 903 SAN JACINTO, SUITE 322  
 AUSTIN, TX 78701-2450

Chase Home Finance  
 3415 Vision Drive  
 Columbus, OH 43219-6009

CitiMortgage, Inc.  
 PO Box 6030  
 Sioux Falls, SD 57117-6030

Eduardo Gutierrez  
 c/o B Weldon Ponder, Jr, Attorney at Law  
 9442 Capital of Texas Highway N  
 Arboretum Plaza One #500  
 Austin, TX 78759-7262

Hickson Law, P.C.  
 4833 Spicewood Springs  
 Suite 200  
 Austin, TX 78759-8436

(p)KATENELL LLC  
 3432 GREYSTONE DR  
 STE 100  
 AUSTIN TX 78731-2357

Lillian Wilson, LLC  
 c/o Douglas J. Powell  
 820 W. 10th St.  
 Austin, TX 78701-2065

Ocwen Loan Servicing, LLC  
 1661 Worthington Road, Suite 100  
 West Palm Beach, FL 33409-6493

Reagan National Advertising of Austin, Inc.  
 c/o Mitchell D. Savrick  
 4330 Gaines Ranch LP #150  
 Austin, TX 78735-6758

U. S. Attorney/Civil Process Clerk  
 601 N. W. Loop 410, Suite 600  
 San Antonio, TX 78216-5597

Capital One  
 PO Box 30285  
 Salt Lake City, UT 84130-0285

Chase Records Center  
 Attn: Correspondence Mail  
 Mail Code LA4-5555  
 700 Kansas Lane  
 Monroe, LA 71203-4774

Citibank NA  
 c/o McCarthy Holthus & Ackerman LLP  
 1255 W 15th St #1060  
 Plano TX 75075-4220

Eduardo Gutierrez  
 c/o Paul T. Morin  
 503 West 14th St.  
 Austin, TX 78701-1723

(p)HUNTER KELSEY OF TEXAS  
 3432 GREYSTONE DR  
 STE 100  
 AUSTIN TX 78731-2357

Katnell, LLC  
 c/o Douglas J. Powell  
 820 W. 10th  
 Austin, TX 78701-2065

Ocwen Loan Servicing , LLC  
 P.O. Box 24737  
 West Palm Beach, FL 33416-4737

Oscar Trevino  
 15212 FM 1825  
 Pflugerville, TX 78660-3130

(p)TARPON HUNTERS LLC  
 3432 GREYSTONE DR  
 STE 100  
 AUSTIN TX 78731-2357

U.S. Attorney General  
 Main Justice Building, Room 5111  
 10th and Constitution Ave. NW  
 Washington, D.C. 20530-0001

United States Trustee - AU12  
 United States Trustee  
 903 San Jacinto Blvd, Suite 230  
 Austin, TX 78701-2450

Wells Fargo  
 MAC S4101-08D  
 100 West Washington 8th Floor  
 Phoenix, AZ 85003-1803

Deborah B. Langehennig  
 Barton Creek Plaza II, Suite 320  
 3801 Capital of Texas Highway South  
 Austin, TX 78704-6640

Elizabeth June Hickson  
 4833 Spicewood Springs Rd., #200  
 Austin, TX 78759-8436

Rafael Montes de Oca  
 3417 Vintage Drive  
 Round Rock, TX 78664-7902

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Hunter-Kelsey of Texas LLC  
 4131 Spicewood Springs Road  
 Bldg J-1  
 Austin, TX 78759

Katenell, LLC  
 3432 Greystone Drive  
 Suite 100  
 Austin, TX 78731

Lillian Wilson, LLC  
 3432 Greystone Drive  
 Suite 100  
 Austin, TX 78731

Tarpon Hunters, LLC  
 3432 Greystone Dr.  
 Suite 100  
 Austin, TX 78731

End of Label Matrix	
Mailable recipients	34
Bypassed recipients	0
Total	34

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE:

RAFAEL MONTES DE OCA  
DEBTOR

CASE NO. 15-10587TMD  
CHAPTER 13

**ORDER GRANTING DEBTOR'S MOTION FOR RELIEF FROM  
AUTOMATIC STAY TO CONTINUE APPEAL  
PENDING IN THE THIRD COURT OF APPEALS**

On this day on to be heard the Motion of RAFAEL MONTES DE OCA (Movant) for relief from stay regarding pending state litigation. The Court, noting that proper notice has been sent to all parties in interest concerning the Motion and no party having filed a response is of the opinion that the following order is appropriate:

It is, accordingly, ORDERED, ADJUDGED and DECREED that automatic stay provisions of 11 U.S.C Section 362 be and are hereby modified to permit Movant to prosecute the appeal that is currently stayed in the Third Court of Appeals, Cause No. 03-14-00668-CV, styled Rafael Montes De Oca, Appellant v. Eduardo Gutierrez, Appellee; and to take any and all such action as may be

necessary and incident to finalizing the state court action, including any further appeals.

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Elizabeth J. Hickson, SBN 09586000  
4833 Spicewood Springs Road  
Suite 200  
Austin, Texas 78759  
(512)346-8597  
(512)346-2047 fax  
[lizhickson@hicksonlawpc.com](mailto:lizhickson@hicksonlawpc.com)